

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

HECKLER & KOCH, INC., and
HECKLER & KOCH GMBH,

Plaintiffs,

vs.

GERMAN SPORT GUNS GMBH, and
AMERICAN TACTICAL IMPORTS, INC.,

Defendants,

AND

GERMAN SPORT GUNS GMBH, and
AMERICAN TACTICAL IMPORTS, INC.,

Counterclaimants,

vs.

HECKLER & KOCH, INC., HECKLER &
KOCH GMBH, G. WAYNE WEBER, and
NIELS IHLOFF,

Counterclaim Defendants.

No. 1:11-cv-01108-SEB-TAB

ORDER ON COUNTERCLAIMANTS' MOTION FOR RECONSIDERATION

This cause is before the Court on Counterclaimants' Motion for Reconsideration [Docket No. 235], filed on November 21, 2013. The motion challenges the Court's September 30, 2013 order [Docket No. 215] partially granting Counterclaim Defendants' motion to dismiss.

Counterclaimants took two steps in response to the Court's partial dismissal of their counterclaims against Heckler & Koch, Inc. (HK USA), Heckler & Koch GmbH (HKG), G. Wayne Weber, and Niels Ihloff. First, on October 30, 2013, they filed a motion for leave to file

an amended answer and counterclaims [Docket No. 228]. Second, they filed this motion for reconsideration.

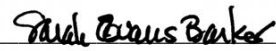
On January 14, 2014, Magistrate Judge Baker granted Counterclaimants' motion for leave to amend, and Counterclaimants accordingly filed an Amended Answer that restated all of the counterclaims present in their first Answer—including those that had been dismissed by the Court¹—and added new counterclaim defendants for the fraud and constructive fraud counterclaims. *Compare* Docket No. 56 with Docket No. 251. The Amended Answer and Counterclaims wholly supersedes Counterclaimants' original submission. *See Flannery v. Recording Industry Ass'n of Am.*, 354 F.3d 632, 638 n.1 (7th Cir. 2004); *Wellness Community-Nat'l v. Wellness House*, 70 F.3d 46, 49 (7th Cir. 1995). It therefore renders the pending motion for reconsideration on the original Answer and Counterclaims moot. *See Martino v. Western & Southern Financial Group*, 2008 WL 4775451, at *2 (N.D. Ind. Oct. 28, 2008). The Court will address the questions raised by Counterclaim Defendants' pending motion to dismiss these amended counterclaims in a separate entry—considering as we do so whether new facts or arguments presented in the Amended Answer warrant a different disposition of the claims than that reached by the Court in its order of September 30, 2013.

Counterclaimants' Motion for Reconsideration is therefore DENIED as moot.

IT IS SO ORDERED.

¹ In its partial grant of the Counterclaim Defendants' motion to dismiss on September 30, 2013 the Court dismissed the following counterclaims: Count I for actual fraud against all Plaintiffs/Counterclaim Defendants, Count II for constructive fraud against all Plaintiffs/Counterclaim Defendants, Count III for deception with respect to Counterclaim Defendant Ihloff, and Count VII for tortious interference with business relations with respect to Counterclaim Defendant Ihloff. That order denied the motion to dismiss for Counts III and IV with respect to Counterclaim Defendant Weber, and it left undisturbed those Counts that had not been challenged by the motion to dismiss—namely, breach of contract (three counts), a request for the cancellation of U.S. Trademark Reg. No. 1,594,109, a claim for false registration, and declaratory judgment claims. *See* Docket No. 215 at 26.

Date: 04/11/2014

A handwritten signature in black ink, reading "Sarah Evans Barker", positioned above a horizontal line.

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana